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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/169126

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 29, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on November 03, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the request for personal care worker services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On April 13, 2015, [REDACTED] Care, on behalf of the Petitioner, submitted a request for prior authorization of 15.5 hours per week of personal care services. (PA 515103275). (Exhibit 3 for MPA-169127)
3. On May 22, 2015, the Department of Health Services sent to the Petitioner and [REDACTED] Care, notices advising them that the request for services was modified to 11.75 hours per week. (Exhibit 3 for MPA-169127)
4. On June 18, 2015, TLC Personal Care Agency submitted, on behalf of the Petitioner, a request for prior authorization of 40.75 hours per week of personal care services for 53 weeks at a cost of \$712,780.00. (Exhibit 3)
5. On August 31, 2015, the Department of Health Services sent to the Petitioner and TLC Personal Care Services, notices, advising them that the request for services was modified to 11.75 hours per week. (Exhibit 3)
6. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on September 29, 2015. (Exhibit 1)
7. On October 27, 2015, the RN consultant from OIG approved 12.5 hours per week of PCW services. (Exhibit 2)
8. Petitioner is 61 years old and lives alone. (Exhibit 3)

### **DISCUSSION**

Personal Care Services are a covered service by Medicaid. They are defined as, “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care.” *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient’s medical condition or to maintain a recipient’s health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

*Wis. Admin. Code § DHS107.02(3)(b)*

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;

7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

TLC Personal Care, on behalf of Petitioner, requested 40.75 hours per week of active PCW services. According to the letter from the Department of Health Services, Office of the Inspector General, DHS ultimately approved the 12.5 hours per week of active PCW service hours.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, TLC Personal Care, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*. A copy of the table was included as attachment 6 of the OIG letter, Exhibit 2.

The letter from the Office of the Inspector General indicated that DHS allowed the following times for the following activities:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day, 2x per day, x 7 days	140 minutes per week
3. Grooming: 15 minutes x 2 x per day x 7 days	210 minutes per week
4. Eating: zero minutes	zero minutes
5. Mobility: zero minutes	zero minutes
6. Toileting: zero minutes	zero minutes
7. Transfers: zero minutes	zero minutes
8. MOTs: zero minutes	zero minutes
<hr/>	
Total:	560 minutes week

#### Bathing

For bathing, DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table: 30 minutes per day x 7 days a week = 210 minutes per week. The Petitioner testified that this was reasonable.

#### Dressing

Per page 5 of the PCST instructions, one episode of dressing is included in the 30 minutes allowed for bathing. The PCST instructions can be found in attachment 11 of Exhibit 2. They may also be viewed on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

DHS allowed the maximum amount of time permitted for the second episode of dressing both upper and lower body: 20 minutes per day x 7 days a week = 140 minutes per week. The Petitioner testified that this was reasonable.

#### Grooming

DHS allowed the maximum amount of time that the Personal Care Activity Time Allocation Table permits for grooming, 30 minutes per day. The Petitioner testified that this was reasonable.

#### Eating

The Petitioner does not dispute the fact that he is able to feed himself. As such, it is found that DHS correctly denied PCW time for this task.

#### Mobility

The Petitioner testified that he uses a cane or walker to ambulate and that he is able to move from place to place in his home safely. The Petitioner testified that it just takes him a little extra time. The Petitioner

testified that he has no recent history of falling in his home. Accordingly, it is found that DHS correctly denied time for this task.

### Toileting

The Petitioner testified that he has grab bars and a raised toilet seat, and that he is able to use the bathroom, but that he has difficulty getting to the bathroom on time and will wet himself. However, the Petitioner also indicated that he has not tried using an incontinence product like Depends. The Petitioner also testified that he has difficulty reaching back and wiping his bottom, due to back pain.

The PCST completed by TLC Personal Care Services on June 18, 2015, indicated that the Petitioner needs assistance with toileting at level D, because he needs help from another person to use a toilet and or change personal hygiene products, three times per day. It also indicated that the Petitioner has urinary incontinence and needs assistance with incontinence four times per day. (Exhibit 3)

The PCST completed by [REDACTED] Care in March 2015, indicated that the Petitioner was able to toilet himself or provide his own incontinence care. As such, he did not require PCW assistance with this task.

It is not clear why the two PCSTs, completed only a few months apart, came to completely contradictory conclusions.

In order to resolve that discrepancy, we must turn to Petitioner's medical records. However, the medical records supplied by TLC Personal Care are difficult to read. From what can be discerned, the records do not appear to include a diagnosis for urinary incontinence. In addition, there was no explicit diagnosis concerning back pain, in the records. As such, they do not support the request for assistance with toileting, at this time.

Accepting, for argument's sake, that the Petitioner suffers from urinary incontinence, there are more cost-effective means of assisting him, including the use of Depends like products, so he does not wet himself.

Based upon the foregoing, it is found that DHS correctly denied PCW assistance with toileting.

### Transfers

The Petitioner testified that he is slow, but able to complete transfers out of bed or a chair on his own. Accordingly, it is found that DHS correctly denied PCW assistance with this task.

### Medically Oriented Tasks

The Petitioner testified that he does not need assistance with medication and that he knows what his medications are for and when to take them.

### *Total Time Needed for ADLs and MOTs*

Based upon the foregoing, the actual time needed to complete Petitioner's ADLs and MOTs is as follows:

- |             |                       |
|-------------|-----------------------|
| 1. Bathing  | 210 minutes per week  |
| 2. Dressing | 140 minutes per week  |
| 3. Grooming | 210 minutes per week  |
| 4. Eating   | zero minutes per week |
| 5. Mobility | zero minutes per week |

6. Toileting	zero minutes per week
7. Transfers	zero minutes per week
8. MOTs	zero minutes per week
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	560 minutes per week

*Incidental Tasks*

It is undisputed that the Petitioner lives alone.

Per the on-line Provider Handbook, topic 3167, for individuals who live alone, time equal to 1/3 of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares such as changing and laundering linens, light cleaning in areas used during personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One third of 560 minutes is 186.67 minutes.

Thus, the total time allowed for PCW services works out to be:

560 minutes per week for ALDs  
+186.67 minutes per week for incidental activities

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746.67 minutes per week

746.67 minutes ÷ 15 minutes per unit = 49.78 units per week rounded to 50 units per week  
50 units per week = 12.5 hours per week of personal care services.

DHS ultimately approved 12.5 hours of personal care service hours per week. As such, its modification was correct,

Petitioner should be aware that if TLC Personal Care can show a medical need for more time, it can always submit a request [an amendment/a new prior authorization] for additional time, with evidence to show the need for the additional time.

**I note to the petitioner that his provider, TLC Personal care will not receive a copy of this Decision. He might wish to share this decision with TLC Personal Care, if he would like them to submit a new request for additional services.**

**CONCLUSIONS OF LAW**

DHS correctly modified the Petitioner's request for personal care services, approving 12.5 hour per week of services.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

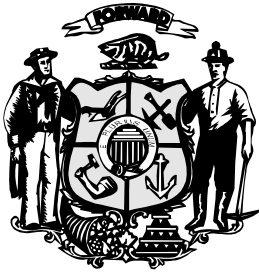
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 7th day of December, 2015

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 7, 2015.

Division of Health Care Access and Accountability